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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.C. et al., Persons Coming Under the Juvenile Court Law.	B260779 (Los Angeles County Super. Ct. No. DK08320)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Appellant, v. JONATHAN C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Tyna Thall Orren, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Appellant.

J.C. (then two years and nine months old) and Jonathan C. (then one year and eight months old) came to the attention of the Department of Children and Family Services (DCFS) on November 12, 2014, when the Los Angeles County Sheriff's Department contacted DCFS after Jonathan C. (father) and Celeste R. (mother) were arrested on charges of methamphetamine possession and felony child endangerment. The department had been investigating an assault with a deadly weapon case in which father and mother were suspects. Members of a gang surveillance unit watching the home saw father, mother, and their two children leave in a Kia Sorrento. When the detectives made a traffic stop of the car, father was driving, mother was in the passenger seat, and the two children were in the back seat. The detectives recovered from the glove box a clear plastic baggie containing what looked like methamphetamine. Father said the drug was his. When one of the detectives told father that his children could die if they ingested methamphetamine, father said he knew this and was remorseful.

The detectives detained mother and father in the assault with deadly weapon case, and escorted mother and the children back to the home to execute a search warrant. Mother let the detectives into the home, where they recovered no additional evidence. When DCFS arrived at the home, mother was in the back of the patrol car. Mother told the social worker that she had no idea what was happening or why she was being arrested, admitted that "crystal or something like that" had been found in the glove box, and stated the drugs belonged to father. Mother had left the relationship because father, a registered gang member, was using drugs. She returned four months later believing he was no longer using, but "if they found meth in the glove box then he is probably still using." The social worker took the children, who were free of signs of abuse and developmentally appropriate, into protective custody.

After interviewing mother and father at the sheriff's station, the deputies concluded there was not enough evidence to charge either one in the assault with deadly weapon case. Mother told the sheriff she knew nothing about the methamphetamine in the car. Father admitted it belonged to him and he had put the baggie in the glove box. He felt bad that he put his children at risk. Mother and father were arrested on charges of

child endangerment and possession of a controlled substance. Mother was not formally charged.

At the detention hearing on November 17, 2014, mother was present. The court found father the presumed father and detained the children, with unmonitored day visits for mother and monitored visitation for father. Father appeared in criminal court and pleaded nolo contendere to one count of Health and Safety Code section 11377, possession of a controlled substance, receiving a suspended sentence and 12 months of summary probation.

A petition filed the same day alleged under Welfare and Institutions Code section 300, subdivision (b)[1] that mother and father "placed the children in a detrimental and an endangering situation in that the parents' vehicle contained methamphetamine within access of the children"; that father, a current abuser of methamphetamine, had used drugs "while the children were under his care and supervision"; and that mother knew and failed to protect the children. Father was arraigned on November 19, and the court ordered DCFS to set up on-demand drug testing.

Further investigation showed that mother had been arrested for DUI on August 16, 2014, with disposition suspended pending her completion of a DUI program. She explained that on a weekend when the children were with father, after a few drinks at dinner she had fallen asleep at the wheel and rear-ended a car at a red light. She was in the process of completing her program, and had not had a drink since.

Mother explained that the Sorrento was hers, but father was driving because her license had been suspended for a year. She did not know the drugs were in the car. Mother did not allow the children in the front seat of the car when she was not around because J.C. "'knows how to turn the keys.'" She had separated from father because he cheated on her but moved back in September 2014, when he said he wanted to change. Mother knew father used marijuana outside once a day to help with his appetite although he never saw a doctor about it, and never smoked in front of the children. When they

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[1] All subsequent statutory references are to the Welfare and Institutions Code.

broke up he turned to methamphetamine, and told her he needed her help because his drug use was getting worse. When she met with father he was very thin and did not look good. Mother told him that if she ever found out that he was using, she would leave with the children, and he swore he did not use when he had the children with him during their separation. She moved back in about four weeks later. Father was from Pico Nuevo, a gang in Pico Rivera. He was not active in the gang but had gotten a tattoo on his face "'to prove himself.'" They moved to Los Angeles to get away from the gang and she wouldn't tolerate him going back. She looked forward to parenting classes and thought father should go to therapy.

Father "'took full responsibility for whatever was in the car.'" He had the methamphetamine with him because he was leaving the house. He had used once a week for a month or two. He last used on the weekend before his arrest, and he stored the methamphetamine "'in my top closet where my shoes are.'" Father had used marijuana since he was 17 or 18. He smoked outside the house every day until the Tuesday before his arrest, but never in front of the children. He had a medical marijuana card (he had never consulted with a doctor) and used the drug for anxiety, insomnia, or to get an appetite. He never thought his drug use got out of hand. Father loved his children and had been working overtime to buy what they needed.

DCFS investigated the home of maternal grandmother (MGM) for possible placement of the children. On December 1, 2014, the court released the children to MGM on an extended visit. Father tested negative for drugs on December 2, 2014. Mother was attending Al-Anon meetings, and had attended a parenting orientation and a M.A.D.D. presentation. Father provided DCFS with photographs of a glove box with a key, and 25 pay stubs.

At the adjudication hearing on December 8, 2014, both parents were present. Father called the dependency investigator, who testified father had given her the photographs and told her they showed the Sorrento's glove box. Asked whether the children would be able to open the box with a key, she replied, "[t]he police report did not indicate that the glove box was locked during their search." The children were

reported to be in the back seat, but she still believed they were at risk although there was no evidence of domestic violence, physical abuse, a dirty home, or missed doctor's appointments. Father's gang affiliation was in the Pico Rivera area and the family lived in south Los Angeles, but "in general the association with the gang does attract certain dangerous elements to the family home. And substance abuse, as well," which was how the case arose.

Mother testified on father's behalf. She took the photographs of the car's glove box. She did not know whether it was locked the day the sheriff stopped them. Father supported the family, working Monday through Friday and overtime on Saturday. When he came home he played with the children or ran errands. Mother learned he was using methamphetamine again the day the sheriff pulled them over. Up to then she had noticed nothing different, and he had not been going out with his friends. They moved away from Pico Rivera a year and a half ago to keep father away from the gang and to be safe as a family.

Mother learned father was using methamphetamine during the break-up. He stayed in the apartment and she took the children to live with MGM. Mother made sure that paternal grandmother (PGM) was present whenever the children were with father (although not when he picked them up for visits). The family had lived with both sets of grandparents before moving to Los Angeles, including during a prior breakup when father moved in with his parents and she kept the children. She had known that father used marijuana (with no medical reason to do so), but not methamphetamine. She believed that he would not put his children at risk by using methamphetamine when he was with them, and she did not allow him to smoke marijuana inside.

Father's counsel argued that the methamphetamine was in the glove box, and there was no evidence that the two and one-year-old children had been harmed by father's drug use or that a substantial risk of harm existed. Father went to work every day to provide for his family, and was not abusing drugs to the point that it would affect the children. Father had moved out of the gang area and the court could infer that the gang was not active where the family lived. When counsel argued that the glove box was locked, the

court interjected that there was evidence to the contrary. Counsel argued that the key could open the box. "Maybe it was there where the kids could have opened it. Maybe it wasn't . . . . [W]e have kids that I don't even think have the ability to open up a glove box at their young and tender age. I don't think they can reach it if they were sitting in a seat."

Mother's counsel argued that she did not know the methamphetamine was in the car and that she was protective of the children, making sure father did not smoke marijuana around them and that PGM was present when father had the children. The children's counsel asked the court to strike the allegations as DCFS had not shown any risk to the children; there was no evidence they could access the glove box or that father used around them.

The court indicated it was inclined to dismiss the allegation regarding father's use of methamphetamine, but would sustain the allegation that having the drug in the glove box endangered the children. "[W]e don't have that evidence that the glove box was locked," and from his observation of J.C. at the hearing "she is quite active, perfectly capable of opening something . . . [and] would have perfect access to the drugs if left unattended," creating a dangerous situation. "If you are going to have drugs around a child, I do believe they need to be completely out of the reach and the vicinity of children."

DCFS argued that the court should sustain both allegations because "this is a family where drug abuse is consistent and accepted." As to the glove box, there was no evidence it was locked, and if drug trafficking was involved "it's about who's looking for you." Father was a known gang member, and even a few miles away the family was at risk.

The court dismissed the allegation regarding drug use, concluding, "I do not have evidence that the father has used or abused drugs in the presence of the children that are putting them in danger." The court sustained the allegation regarding the methamphetamine in the glove box: "I do have evidence that the father placed drugs in the vicinity of the children and in the car where they were traveling, and that is

dangerous. And it is not only because the child could get access to it, which is clearly the case with an active two-year-old. It is also because even though father denies that this was for sale, that this amount was for [his] personal use, it could be involved in trafficking and drug trafficking and kids do not mix." Father's gang affiliation also indicated that "having the drugs and the children in the car at the same time in a possibly unlocked glove box poses a risk to the children." The court struck mother from the sustained allegation, and released the children home to her on the condition she reside with MGM. The children were removed from father, who was ordered to participate in a substance abuse program with testing twice a month and parenting education. When father had tested clean five times, his visitation could be unmonitored, and DCFS had discretion to liberalize.

Father filed a timely appeal. DCFS filed a notice of appeal from the dismissal of the allegation regarding father's methamphetamine abuse.

DISCUSSION

Father's appeal

The sustained allegation under section 300, subdivision (b), states that father "placed the children in a detrimental and an endangering situation in that the parents' vehicle contained methamphetamine within access of the children," placing them at risk of physical harm. Father argues there is no evidence that the methamphetamine in the glove box was realistically within access of his children, and therefore there was not a substantial risk of physical harm to justify the jurisdictional finding. Father does not challenge the dispositional order.

We review to determine whether substantial evidence, contradicted or uncontradicted, supports the juvenile court's finding of jurisdiction. We must resolve any evidentiary disputes in favor of the court's decision and draw all reasonable inferences to support its decision. We cannot reweigh the evidence and we leave to the trial court credibility determinations and issues of fact. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We merely determine whether sufficient facts support the finding of the trial court. (*Ibid.*)

The evidence was that the sheriff found a baggie of methamphetamine in the glove

box in the front seat of the family car. Father was driving, with mother in the passenger seat and the children in the back seat; J.C. was two years and nine months old, and Jonathan C. was one year and eight months old. The glove box could be locked with the car key, but there was no evidence that it was locked. Mother did not allow the children in the front seat when she was not around because J.C. knew how to turn the keys. The methamphetamine was father's, and he knew ingesting it could be fatal to his children. Father was using methamphetamine once a week including the weekend before. He put the drug in the glove box because he was leaving the house. Father also stored the drug in the "top closet where my shoes are." The court observed J.C. at the hearing and believed she was "perfectly capable" of opening the glove box and getting access to the drug.

Viewing the evidence and drawing inferences in favor of the judgment, we observe that father used methamphetamine regularly and put the methamphetamine in the glove box because he was leaving the house, from which we infer that he carried the drug with him as a matter of course. The older child, J.C., could use keys, and was an active child perfectly capable of opening the glove box. That the children were in the back seat at the time the deputies stopped the car does not mean they were never in the front seat. When at home father stored the drug with his shoes in his "top closet," and there was no testimony that the closet was out of reach of the children. The trial court could reasonably conclude that the methamphetamine was accessible to the children, putting them at substantial risk of harm.[2]

Father cites *In re W.O.* (1979) 88 Cal.App.3d 906, in which the parents' cocaine was found in a metal strongbox on a closet shelf and marijuana inside a box in a kitchen drawer. (*Id.* at p. 908.) The appellate court reversed the jurisdictional and dispositional orders of the trial court, concluding that the trial court merely "speculated" that the drugs were accessible to the children. The cocaine on the closet shelf was out of reach of the

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[2] There was no evidence regarding the amount of methamphetamine and no testimony regarding whether father was selling the drug, although the Pico Nuevo gang was involved in illegal narcotics use.

older child (two years old), and while a child of two could reach the drawer, there was no evidence he could open the drawer or the box of marijuana. (*Id.* at pp. 910–911.) Here, however, we have methamphetamine in a baggie inside the family car's glove box. The trial court observed the older child to be capable of opening the glove box if left unattended, and ingestion of the drug could be fatal. Father always drove the children because mother's license was suspended. Father stated he had the drug in the car because he left the house, from which we can infer that father's drugs were always in the car when the children were passengers. Father emphasizes that the children were not unattended when the methamphetamine was found, but that is immaterial. The question in any case involving a substantial *risk* of harm from stored drugs is whether there was substantial evidence that the drugs were accessible to the children in the event of a parent's future absence or momentary lapse of attention. It is reasonable to infer that father's regular drug use increased the possibility of a lapse of attention, thereby making the risk of harm more substantial.

DCFS's appeal

As we affirm the trial court's jurisdictional finding over the children regarding father's storage of methamphetamine in the glove box, we dismiss DCFS's appeal. Dependency jurisdiction over the children is already supported by the sustained allegation which we affirm. The children have been removed from father's custody and father was ordered to participate in services and awarded monitored visitation. DCFS does not identify any consequence of the court's dismissal of the additional count alleging that father's methamphetamine use renders him incapable of providing regular care and supervision of the young children. "'When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.'" (*In re I.J., supra,* 56 Cal.4th at p. 773.) Our consideration

of the trial court's dismissal of the count would not affect the juvenile court's jurisdiction over the children. "When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.)

DISPOSITION

The order is affirmed. The Department of Children and Family Service's appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

CHANEY, J.

Rothschild, P. J., Dissenting.

No doubt father demonstrated a lack of good judgment when he placed a baggie of methamphetamine in the glove box of the family car. That poor decision, however, does not support an exercise of dependency jurisdiction in the absence of a showing that it subjected the children to an actual, serious and substantial risk of harm. The DCFS made no such showing in this case. I disagree with the majority's conclusion that the jurisdictional finding as to the children is supported by substantial evidence, and I accordingly, dissent.

Welfare and Institutions Code section 300, subdivision (b), the statute pursuant to which the court here exercised jurisdiction, requires proof of three elements: "'(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 [2 Cal.Rptr.2d 429].) 'The third element "effectively requires a showing that at the time of the jurisdiction hearing the child is at *substantial* risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]"'" (*In re J.O.* (2009) 178 Cal.App.4th 139, 152, italics added.) "Section 300, '["]subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk *of serious physical* harm or illness." [Citation.]'" (*In re David M.* (2005) 134 Cal.App.4th 822, 829; accord *In re John M.* (2013) 217 Cal.App.4th 410, 418.)

Thus, the baggie of drugs in the glove box must be connected "to any actual harm" to the children or "substantial risk of serious harm." (*In re David M.*, *supra*, 134 Cal.App.4th at pp. 829-830.) Such harm is not presumed and cannot be based on speculation. (*Ibid.*) Here the children did not suffer any tangible harm. The DCFS was required to show that the children had actual access to the drugs. There was no dispute, however, that when the police stopped the family car, the drugs were inside the closed glove box. At the time the toddlers sat in the backseat and the parents rode in the front seats. Mother was unaware the drugs were in the car, and no evidence existed that, even

assuming the glove box was unlocked, that either child had gained access to the drugs or could open the glove box.

In addition, the evidence in the record does not show a "substantial risk of harm." Mere presence of the children in a location where drugs are found is not sufficient to support a finding of substantial risk of harm. (*In re W. O.* (1979) 88 Cal.App.3d 906, 910 [parents' drug use and discovery of drugs in the family home absent evidence that the drugs were accessible to the children is insufficient to support the exercise of dependency jurisdiction].) Even if one assumes, as the dependency court did and the majority now does, that the three-year-old toddler had the ability to open the glove box, there was no evidence that either child was ever left unattended in the car to have the opportunity to do so. This is not a case like *In re Lana S.*, in which mother left within her children's reach glass pipes, burnt foil, a burnt tablespoon and a blowtorch. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 100.) Nor is it like *In re Rocco, supra,* 1 Cal.App.4th at p. 825, where the 11-year-old minor found the mother's drugs in the bathroom and the mother's prolong absences created an opportunity for the minor to ingest them.

The DCFS failed to prove father exposed the children to drugs or drug paraphernalia. Mother told the DCFS that she did not allow the children in the front seat of the car because the older child, J.C. "knows how to turn the keys." Moreover, father drove the car to work every day, which further limited opportunity for access to the glove box. There was no evidence that the children were ever left alone at the apartment or could access the "top closet" where father stated he stored the drugs. The search of the home did not reveal the presence of any drugs. Mother was watchful of the children and did not leave them unattended. According to the DCFS's own reports, the children were developmentally appropriate, appeared to be well taken care of and the parents were attentive to their needs.

Under these circumstances, the evidence linking the drugs found in the glove box to a significant risk of harm was insufficient. (See *In re David M., supra,* 134 Cal.App.4th at p. 828 [substantial evidence is not synonymous with *any* evidence, and although substantial evidence may consist of inferences, such inferences must be

"'a product of logic and reason'" and "'must rest on the evidence'"; inferences that are the result of conjecture cannot support a finding].) The dependency court's findings and the majority's conclusions are based on unreasonable factual inferences and the apparent belief that the risk is "substantial" simply because it cannot be entirely eliminated—a view that is legally untenable. (*Id.* at p. 830 [risk of harm must be more than a remote possibility].) Based on the evidence in the record and reasonable inferences derived from it, I conclude the risk of harm arising from the slight possibility that the children could access drugs is no more than speculative.

In short, dependency jurisdiction was not warranted based on drugs found in the glove box. Likewise, no other evidence supported the exercise of jurisdiction. The dependency court cited father's gang affiliation and his purported involvement with drug trafficking as additional support to sustain the (b-1) allegation: "And regarding (b)(1), . . . [e]ven if there were evidence that the [glove] box was locked, the other issue . . . about drug trafficking is that it's not just about the child possessing or ingesting the drugs, it's about who's looking for you. And if you are a known gang member, even if you are a few miles outside of your area, your family is still at risk." The court's remarks are conjecture, however. The DCFS did not prove the father was selling drugs; father stated he possessed the drugs for personal use. And the DCFS did not assert any allegations that father's gang connections created a risk to the children. Furthermore, the only other allegation in the petition—the (b)(2) allegation that father abused methamphetamine—was properly rejected by the dependency court because there was no evidence that the father used drugs in the children's presence or that his drug use affected his ability to parent. (See, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [evidence indicating a parent consumes drugs, without more, is not sufficient to sustain the exercise of dependency jurisdiction].)

Substantial evidence did not support the dependency court's findings. I, therefore, would reverse the juvenile court's jurisdiction order based on the (b-1) finding in the petition as well as the court's dispositional order.

ROTHSCHILD, P. J.